

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 379 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

DHIJEN DHARSHI FAMILY TRUST

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Appearance:

MR MANISH R BHATT for Petitioner  
NOTICE UNSERVED for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 02/05/98

ORAL JUDGEMENT (per R.K.Abichandani, J)

The Income Tax Appellate Tribunal has referred the following questions for the opinion of this court under Section 256(1) of the Income Tax Act, 1961.

1. "Whether on the facts and in the circumstances of the case and on a true interpretation of the

trust deed, the conclusion of the Appellate Tribunal that the assessee trust was a specific trust and not a discretionary trust as held by the ITO is sustainable in law?

2. "Whether on the facts and in the circumstances of the case, the assessment in the case of the assessee is not required to be made under the provisions of Section 164 of the I.T. Act, 1961?"

3. "Whether the finding of the Appellate Tribunal that the assessee trust is a specific trust and not a discretionary one is correct in law in view of clause 8(a) and 8(b) of the trust deed which gave discretionary power to the trust to distribute the income?"

2. The matter relates to the assessment year 1978-79. The assessee is a trust and it had claimed exemption in respect of its income. The ITO had held that the assessee trust was a discretionary trust and as such was liable to be taxed under the provisions of Section 164 of the said Act at a statutory rate of 65%. The Assistant Appellate Commissioner taking into account the provisions of clause 8(a) & 8(b) of the Trust Deed accepted the assessee's contention that the trust was a specific trust and not a discretionary trust. He consequently following the decision of the Appellate Tribunal dated 20.11.1980 in the case of Tanvi Trust and held that the assessee was not liable to be taxed at the statutory rate of 65%. The Appellate Tribunal confirmed the order of the AAC following its decision in Tanvi Trust Case.

3. It is pointed out to us by the Learned Counsel for the Revenue that in CIT Vs. Tanvi Sajani Family Trust, reported in 76 Taxman - Tax reports at Page 236 in context of identical clauses it was held by this Court that since the shares of the beneficiaries were determined the provisions of Section 164 of the said Act would not apply and that the assessment was not required to be made under the provisions of section 164. There is no dispute about the fact that Clauses 8(a) and (b) of the Trust deed in the present case are similar to the clause in the Trust deed of Tanvi's case which have been reproduced in para 4 of that judgement.

Clause 8(a) of the Trust Deed in the present case reads as under:-

"Upto and including 31st March 1987 the trustees

shall pay and distribute 30% of the net Income of the Trust Fund to and amongst Kum. Darshi Rajendra Mehta or the survivor or survivors of her or their absolute use and benefit provided however that the whole or any part of the net Income of the Trust fund as may not have to be distributed by the Trustees in any year shall be at the end of the year be added to and held as accretion to capital and form part of the corpus of the Trust Fund and shall be dealt with accordingly."

4. It will be noticed from the aforesaid clause that the share of the beneficiary in the net income of the trust fund is fixed upto and including 31.3.1987. It is therefore clear that the provisions of Section 164 would not apply in the instant case and the assessment in the case of the assessee was not required to be made under Section 164.

5. The questions referred to us are therefore answered in the affirmative in favour of the assessee and against the Revenue. The reference stands disposed of accordingly with no order as to costs.

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